IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 466 of 1998

Date of Decision: 27.4.2007.

Kashmir Singh Thakur ..Petitioner.

Versus.

State of H.P. & ors. ..Respondents.

Coram:
The Hon'ble Mr. Justice Deepak Gupta, Judge.
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Petitioner(s): Mr. Anand Sharma, Advocate.

For the Respondent(s): Mr. R.M.Bisht, Dy. Advocate General.

Deepak Gupta, J (Oral).

The petitioner by means of this writ petition has challenged the order of the learned H.P. State Administrative Tribunal, in OA No. 1366 of 1990 decided on 31.3.1998.

The brief facts necessary for decision of the case are that the petitioner was admittedly appointed as Assistant Public Prosecutor (for short: APP) prior to Shri Ravinder Singh Dhaulta (since deceased), Gian Inder Singh (since deceased) and Shri P.M.Negi, who has since left the cadre and joined the office of the Advocate General.

The petitioner admittedly had not cleared the departmental examination and was, therefore, not considered for promotion to the post of Assistant District Attorney-cum- Public Prosecutor and respondents 2 to 4 were promoted as Assistant District Attorneys-cum-Public Prosecutors in 1990. The stand of the respondents is that since the petitioner had not cleared the departmental

examination, his name could not be considered for promotion to the post of Assistant District Attorney-cum-Public Prosecutor. The case set up by the petitioner is that when he was appointed as APP, the rules which were in existence did not lay down that the APP should qualify the departmental examination to be eligible for promotion. He accordingly submits that he was wrongly not considered for promotion to the post of Assistant District Attorney-cum- Public Prosecutor.

In this behalf, it is pertinent to mention that the post of APP was initially a non-gazetted post. This was declared to be a gazetted post with effect from February 6, 1987. The State of H.P. has notified the H.P. Departmental Examination Rules, 1976 in exercise of the powers conferred under Article 309 of the Constitution. These rules are applicable to all the gazetted officers working in connection with the affairs of State of Himachal Pradesh.

There is no manner of doubt that APPs are covered under these rules. Rule 21 of the said rules provides that in case a gazetted officer fails to pass the departmental examination, he shall not be eligible for crossing the efficiency bar; confirmation in service and promotion to the next higher post. The proviso to these rules provides that if there are specific rules governing the conditions of service of a category of class of officers, the provisions contained in such rules relating to the effect of failure to pass the departmental examinational shall prevail.

Shri Anand Sharma, learned counsel for the petitioner has vehemently contended that when the petitioner was appointed, the Departmental Examination Rules were admittedly not applicable to him and since the R & P rules of APPs were only amended in 1991, the petitioner could not have been debarred from promotion on the ground that he had not cleared the Departmental Examination.

We are not at all in agreement with this contention. The un-amended Recruitment and Promotion Rules were silent with regard to the passing of the

departmental examination. They did not contain any stipulation nor made any reference to the departmental examination. The departmental examination rules aforesaid are applicable to all Gazetted officers. Therefore, once the post of APPs was declared to be a gazetted post, in our considered opinion, the Departmental Examination Rules ipso facto became applicable to the APPs also.

The letter Annexure A-3 dated 4.7.1987 which asked the APPs to appear in the examination only advised the APPs that they were required to pass the departmental examination under the Departmental Examination Rules. This letter did not lay down any instructions. Therefore, the contention of Shri Anand Sharma, that by means of this letter the respondents were purporting to amend the rules cannot be accepted. All that this letter stated was that the APPs in terms of Departmental Examination Rules, 1976 were required to pass departmental examination. This was in the nature of an advice sent to all APPs including the petitioner.

Shri Anand Sharma, has also contended that two persons S/shri Shiv Pal Singh Patyal and Raghu Raj Singh who are not parties in the present case were promoted in July, 1998 although they had not cleared the departmental examination and, therefore, his client has been discriminated against. This contention is also without any merit. The respondents in their reply have clearly mentioned that since the posts of APP were only declared as gazetted in February 6, 1987 and the aforesaid two officials were considered soon thereafter, in view of the fact that they did not have any opportunity to appear in any departmental examination they were promoted without having passed the departmental examination. The case of these two officers stands on a totally different footing.

The petitioner had more than three years to pass the departmental examination. In fact, it appears that he did attempt to qualify the examination but did not pass. The Departmental Examination Rules became applicable to the

APPs after the said posts were declared as gazetted posts. It is by virtue of the post being declared as gazetted that the Departmental Examination Rules automatically became applicable to the said post.

The learned Tribunal has correctly and rightly appreciated the matter. There is no error in the order of the learned Tribunal rejecting the petition. The writ petition is dismissed with no order as to costs.

(Deepak Gupta), J.

April 27, 2007. (Surinder Singh), J.

s.